

**CITY OF CORNING
AIRPORT COMMISSION AGENDA**



**MONDAY, JANUARY 5, 2009
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. CALL TO ORDER: 7:30 p.m.

B. ROLL CALL:

Commissioners:	Rindahl
	Hand
	Salado
	Vacant
Chairman	Boot

C. BUSINESS FROM THE FLOOR: If there is anyone in the audience wishing to speak on items not already set on the Agenda, please come to the podium, give your name and address, and briefly identify the matter you wish to have placed on the Agenda. The Commission will then determine if such matter will be placed on the Agenda for this meeting, scheduled for a subsequent meeting, or recommend other appropriate action. If the matter is placed on tonight's Agenda, you will have the opportunity later in the meeting to return to the podium to discuss the issue. The law prohibits the Commission from taking formal action on the issue, however, unless it is placed on the Agenda for a later meeting so that interested members of the public will have a chance to appear and speak on the subject.

D. REGULAR AGENDA: All items listed below are in the order, which we believe, are of most interest to the public at this meeting. However, if anyone in the audience wishes to have the order of the Agenda changed, please come to the podium, state your name and address, and explain the reason you are asking for the order of the Agenda to be changed.

- 1. Review of Updated Lease Agreement with Carol and Bryan Carpenter of Rainbow Aviation. (Included is the Staff Report listing the terms that was presented to, and approved by the City Council on November 25, 2008.**

E. ITEMS PLACED ON THE AGENDA FROM THE FLOOR:

F. ADJOURNMENT!

POSTED FRIDAY, JANUARY 2, 2009

LEASE

THIS LEASE is made by and between the **CITY OF CORNING**, a municipal corporation, hereinafter called "**Lesser**", and **BRIAN J. CARPENTER** and **CAROL CECCONE-CARPENTER**, doing business as **RAINBOW AVIATION SERVICES**, and hereinafter called "**Lessee/Operator**", upon the following terms and conditions:

1. Lessor leases to Lessee/Operator and Lessee/Operator leases from the Lessor that portion of the property describe in exhibit "A" which is identified theron as "Administration Building", and "North and South" City Owned Hangars.
2. This Lease shall be in effect for twenty-five (25) years commencing **January 1, 2009** and terminating except as may be hereinafter provided on January 1, 2034. Lessee/Operator has the option to renew this lease for an additional five (5) years if he is not in default during the initial contract period and provided he gives Lessee at least one hundred and twenty (120) days advance written notice of his intent to exercise this renewal option. If this option is exercised, all of the terms and conditions of the original lease shall continue in full force and effect except for the amount of the rental, which amount shall be renegotiated between Lessor and Lessee.

A. Payments to Lessee/Operator. During the term of this Agreement, Lessee/Operator shall receive and retain the following fees, payments, and charges:

- (1) **Tie-down fees:** All tie-down fees with the rates to be established in writing by City. Lessee/Operator shall have the authority to move aircraft or order aircraft removed for non-payment of tie-down fees provided such is done in a legal manner and is non-injurious to aircraft.
 - (2) **Fuel Sales:** Shall continue until the City installs a cardlock system and assumes responsibility.
 - (3) **Hangar Rents:** All privately owned hangar lease payments shall be collected and retained by Lessee/Operator during the first two years of this Lease Agreement as a commission. Upon completion of the first two years of Lease Agreement, Lessee/Operator will continue to collect fees and submit them to the Lessor to be placed in the Airport Fund.
3. Lessee/Operator shall pay to Lessor the sum of **\$50 per month** as a fee for rent. Lessor shall pay for electricity only insofar as it relates to the airfield landing lights, beacons, and power for furnishing the water. Lessor shall furnish heating oil for heating the administration building for the term of this lease. Lessee/Operator shall pay the cost of all electrical power used by him in his commercial venture, as well as any telephone service which he may desire to obtain. **Lessee/Operator shall be entitled to receive and retain tie-down fees, and to retain the proceeds from City-owned Hangar-Land Leases for the first two years as provided for in A-3 above.**
 4. Lessee/Operator shall have the right to conduct or permit others to conduct within the Lessee's leased buldings, commercial enterprises, including but not limited to, chartering of aircraft, student instruction, operation of agricultural spraying, dusting and seeding operations, maintenance and storage of aircraft, sale of aviation petroleum products, engine repairs, radio maintenance, ultralight activities, sport aviation activities, parachuting activities or any other similar activities. All commercial business activities

conducted at the airport shall have liability insurance in the amount of \$1,000,000 naming the City of Corning as additional insured, shall have a City of Corning Business License, and shall have Worker's Compensation Insurance if applicable. Some activities may require FAA approval. Lessee/Operator will provide Lessor with all necessary documents that may be required to conduct the above-stated activities.

5. Lessee/Operator agrees to abide by all applicable laws and regulations of the United States, the State of California, the County of Tehama, and the CITY OF CORNING, and to permit no illegal or improper use of said premises. Lessee/Operator agrees that any chemicals or other toxic substances used by him or others to whom he has granted permission to conduct activities will be so stored as not to be dangerous to the public and will be handled and disposed of in accordance with all applicable environmental standards, laws and regulations.

A. Operating Standards: In providing any of the required and/or authorized services or activities specified in this Agreement, Operator shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. Lessee/Operator shall furnish services on a fair, reasonable and non-discriminating basis to all users of the airport. Lessee/Operator shall furnish good, prompt and efficient services adequate to meet all reasonable demands for its services at the airport. Lessee/Operator shall charge fair, reasonable and non-discriminatory prices for each unit of sale or service; provided, however, that Lessee/Operator may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
2. Lessee/Operator shall provide at his sole expense a sufficient number of employees to provide effectively and efficiently the services required or authorized in the Agreement.
3. Lessee/Operator shall meet all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted, including taxes, permit fees, license fees, and assessments lawfully levied or assessed upon the Premises or property at any time situated therein and thereon. Operator may, however, at his/her sole expense and cost, contest any tax, fee or assessment as long as the contest does not jeopardize the continued airport operation.
4. Lessee/Operator shall comply with all Federal, State, and local laws, rules and regulations which may apply to the conduct of the business contemplated, including rules and regulations promulgated by the City, and the Operator shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.
5. Lessee/Operator shall provide the following services at no charge to Lessor or others as part of the consideration this Lease Agreement:
 - a. Cleaning and servicing of public restrooms located at the airport. **[Lessor will supply restroom supplies at its expense.]**
 - b. Landscaping, maintenance and upkeep of existing lawn, mowing, raking leaves, fertilizing, watering and general care for the areas around the buildings. Maintenance of trees, trimming and cleanup both behind the main building and on the front lawn. **[Lessor provides weed abatement on runways, taxiways, ramp areas and around the Lessor-owned hangar and administration building and sprays**

annually. Lessor to maintain and grade the ramp area to keep clean from rocks and mud.]

- c. Maintenance of the tie-down facilities including all necessary replacement of tie-down ropes, providing an adequate supply of chocks, repainting of tie-down spaces **[Lessor supplies paint]**, as required to meet demands.
 - d. Servicing and minor repairs to runways, taxiways and airport beacon lighting. **[Lessor to pay cost of materials if consent first obtained from Lessor prior to purchasing.]**
 - e. Servicing of and repairs to facilities including but not limited to the heating and air conditioning systems, electrical portion of the buildings and minor structural repairs to buildings **[Labor only, not materials]**.
 - f. Maintenance and upkeep of required signage on runways, taxiways, and on the FBO building to Lessor and FAA requirements **[Lessor to supply materials]**.
 - g. Maintenance and upkeep of parking lot and driveway around the administration building. Remove weeds, trash and garbage.
6. Lessee/Operator agrees that so far as facilities for tie-downs shall be available, he shall provide such when requested at rates to be fixed by Lessor.
 7. Lessee/Operator shall have the duty of maintaining or repairing the structures upon the leased premises in as good a condition as they are at the inception of the Lease, normal wear and tear excepted, so far as the foundations, exteriors and roofs are concerned. Any interior alterations to the premises shall be made by Lessee/Operator at the expense of Lessee/Operator and only upon receiving prior approval by Lessor. The water well supplying water to the premises shall be kept operational at the expense of the Lessor.
 8. The failure of Lessee/Operator to pay any utility bills incurred by him, taxes on the personal property, license fees which may be due, or any other obligations incurred in connection with the operation of his activities at said airport shall be grounds for immediate cancellation of this Lease. In the event that Lessee/Operator shall do any work upon said airport, he/she agrees to give the CITY OF CORNING notice of such work at least twenty (20) days before commencement thereof in order that a Notice of Non-Responsibility may be posted. No alterations or improvements shall be made to the leased premises without the prior written approval of Lessor.
 9. Lessee/Operator agrees to permit Lessor to make any capital improvements to the leased premises deemed advisable by Lessor. This paragraph shall relate to improvement of the premises and replacement or repair of airport facilities. All improvements to the property shall become fixtures on the property. This provision does not require Lessor to make any such improvements.
 10. Lessor will provide no insurance upon the personal effects of Lessee/Operator. Lessee/Operator shall have and pay for a liability insurance policy satisfactory to Lessor pertaining to the premises which shall insure not only Lessee/Operator but shall also name Lessor as an additional insured. Lessee/Operator shall furnish Lessor with a copy of such policy. Minimum insurance coverage shall be in the amount of \$1,000,000. Lessee/Operator shall also name Lessor as a co-

insured on a fire or damage policy on the facilities in a form and amount acceptable to Lessor with a company approved by Lessor.

11. In the event that the structures upon the leased premises shall be destroyed from any cause, either totally or partially, so that the structures are not usable, Lessee/Operator may cancel this lease. Lessee/Operator shall be obligated to apply any insurance proceeds on the damaged or destroyed buildings to the repair or reconstruction thereof.
12. In the event that Lessee/Operator shall be adjudged a bankrupt, or shall make any assignment for the benefit of creditors, or go into receivership, this lease shall be forthwith and immediately declared terminated.
13. In the event of an assignment or subletting in whole or in part of the leased premises, such assignment or subletting shall be by an instrument in writing and shall be subject to prior approval by the CITY OF CORNING. No such approval is required for providing tie-down space for aircraft or for storage of aircraft, or for any aircraft maintenance repair business. Lessee/Operator is to reimburse Lessor all expenses incurred in order to determine approval.
14. **Personal Property Taxes:** Lessor has disclosed to Lessee/Operator in accordance with California Revenue and Taxation Code Section 107.6 that this lease may result in the creation of a possessory interest subject to property taxation on the interest of the Lessee/Operator. Lessee/Operator shall pay all such taxes, assessments or other charges levied by City or Tehama County on the due date thereof.
15. **Operator as Independent Contractor:** In conducting its business hereunder, Lessee/Operator acts as an independent contractor and not as an agent of the City. The selection, retention, assignment, direction and payment of Lessee/Operator's employees shall be the sole responsibility of Lessee/Operator and Lessor shall not attempt to exercise any control over the daily performance of duties by Lessee/Operator's employees.
16. **Lessor's Right to Entry:** Operator shall permit Lessor and the agents and employees of Lessor to enter into and upon the property at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Operator for any loss of occupation or quiet enjoyment of the premises thereby occasioned.
17. **Removal of Property:** All buildings, improvements and fixtures placed upon the Premises by Lessee/Operator shall be and remain the property of Lessee/Operator so long as this Agreement shall remain in effect. Upon termination of this Agreement, unless modified by prior provisions of this Agreement, by expiration of time, by agreement, or for default of Lessee/Operator, all improvements and fixtures on the premises and all building equipment, alterations, changes and additions to and upon the Premises shall be left in place, and shall become the property of Lessor. To make these provisions self-executing, Lessee/Operator covenants and agrees that, upon termination of this Agreement, title to all improvements and fixtures, including all building equipment, alterations, changes and additions to and upon the Premises shall pass to Lessor forthwith and without the necessity of any further conveyance or assignment. Lessee/Operator agrees to execute any conveyance or assignment, if necessary, to complete such transfer if requested by Lessor to do so.

18. This Lease may be immediately canceled by the Lessor upon the occurrence of any of the following:
- A. Failure to provide what Lessor considers to be adequate service to owners and operators of itinerant aircraft during daylight hours. [Such service shall consist of the availability of aviation gasoline and normal aviation fuel supplies for the aircraft with a qualified person present to deliver the same. Aviation gasoline shall be dispensed in a method approved by FAA and County of Tehama Department of Weights and Measures. The same service shall also be available to aircraft based at the airport.]
 - B. Any consistent, habitual, or lengthy absence from the airport by the Lessee/Operator which interferes with the efficient provision of service to aircraft owners and operators, or any willful failure to service aircraft either itinerant or stationed at the airport, unless such failure to service the aircraft is for good cause, such as the inability or failure of the aircraft operator or owner to pay for the services to be rendered or expected to be rendered.
 - C. Any action, conduct, or acts on the part of Lessee/Operator which are detrimental to the best interests of Lessor and/or persons entitled to use the Corning Municipal Airport.

[Note: It is understood that the Lessee is engaged in a flight training program and that he will, from time to time, be taking students on flights away from the Airport and will not be in constant attendance. Should he be gone from the Airport for extensive periods of time, such as for more than 24 hours at one time, he shall make arrangements to have another qualified person or persons provide reasonable service to itinerant and locally based aircraft in his absence.]

19. **Waiver:** The waiver by Lessor of, or the failure of Lessor to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee/Operator of any term, covenant or condition of this Agreement, other than the failure of Lessee/Operator to pay the rental agreed upon herein, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.
20. In the event of any default on the part of the Lessee/Operator, and as a result of this default, a suit is brought against the Lessor, the Lessee/Operator agrees to pay such reasonable attorney fees as may be ordered paid by the Court.
21. **Effect of Lessee/Operator's Holding Over:** Any holding over after the expiration of the term of this Agreement with consent of Lessor shall be construed to be a tenancy from month to month at the same monthly rent as required to be paid by Lessee/Operators for the period immediately prior to the expiration of the term hereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.
22. **Remedies Cumulative:** All remedies herein before conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.
23. **Parties Bound:** The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind heirs,

legal representative successors, and assigns all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

24. **Time of the Essence:** Time is of the essence of this Agreement, and of each and every covenant, term, condition and provision hereof.

25. Miscellaneous Provisions:

A. **Entire Agreement:** This Agreement constitutes the entire understanding between the parties, and as of its effective date superseded all prior or independent Agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing, signed by both parties.

B. **Severability:** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of parties.

C. **Notice:** Any notice given one party to the other in connection with this Agreement shall be in writing and shall be sent by registered mail, return receipt requested, with postage and registration fees prepared as follows:

1. **If to Operator,** addressed to: **Brian and Carol Carpenter, c/o Rainbow Aviation Services, N. 930 Marguerite Avenue, Corning, CA 96021.**
2. **If to City,** addressed to: **City of Corning, 794 Third Street, Corning, CA 96021.**

Notices shall be deemed to have been received on the date of receipt as shown on the return receipt.

D. **Governing Law:** This Agreement is to be construed in accordance with the laws of the State of California.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF CORNING, LESSOR:

**RAINBOW AVIATION SERVICES,
LESSEE/OPERATOR:**

By: _____
**Gary R. Strack, Mayor
City of Corning**

By: _____
Bryan J. Carpenter, Lessee

By: _____
Carol Ceccone-Carpenter

ATTEST:

APPROVED AS TO FORM:

By: _____
Lisa M. Linnet, City Clerk

By: _____
Michael C. Fitzpatrick, City Attorney